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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,143	12/31/2003	Maurice Behague	069208.0115	7930
23640	7590	10/19/2007		
BAKER BOTTS, LLP 910 LOUISIANA HOUSTON, TX 77002-4995			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			NOTIFICATION DATE 10/19/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

debbie.allen@bakerbotts.com

## Office Action Summary

Application No.

10/750,143

Applicant(s)

BEHAGUE ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed August 7, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claims 1-3 and 5 as anticipated by O'Riordan: Applicant argues that O'Riordan teaches that the fluid is collected by a suction pump. This is not found persuasive because, while a suction pump is employed, it is not employed explicitly to collect the fluid, in this case blood, but rather is employed to transfer blood already collected by suction wand 10 to the blood reservoir 18. Further, the limitation of collecting a biological fluid by natural flow flows inherently and necessarily from the teachings of O'Riordan because, when the suction pump is off, fluid can be, and still is, collected from the opened end 12 of suction wand 10, until such time as the wand with end 12 is removed from the patient access point.

Applicants' arguments with regard to dependent claims 2-5 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

### *Oath/Declaration*

The oath or declaration filed September 11, 2007 is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The phrase "material information" should instead read "material to patentability" and the citation of 37 C.F.R. 1.56(a) should instead cite 37 C.F.R. 1.56.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Riordan et al (EP 583,148 A2).

With respect to **claim 1**: O'Riordan teaches a method of collecting a biological fluid comprising: collecting a biological fluid by natural flow via a needle (Page 3, lines 45-47); measuring a fluid flow rate of the biological fluid via flow detector 22 (Page 5, lines 19-21); and pumping anticoagulant and/or preservation solution to the collected biological fluid at a solution flow rate (page 3, lines 54,55); wherein the solution flow rate is adjusted while collecting the biological fluid based upon the measured fluid flow rate to preserve a selected ratio between the collected biological fluid and the anticoagulant and/or preservation solution. (Page 3, lines 54,55; Page 4, lines 15-33)

With respect to **claim 2**: The method taught by O'Riordan further comprises: collecting the biological fluid in a collection bag 16 (Fig. 4, Page 4, lines 53-55); and pumping the anticoagulant and/or preservation solution to the collection bag 16 (Page 4, lines 53-55); wherein the solution flow rate is adjusted while collecting the biological fluid based upon the measured fluid flow rate  $Q_b$  to preserve a selected ratio in the collection bag 16 between the

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collected biological fluid and the anticoagulant and/or preservation solution. (Page 4, lines 15-33)

With respect to **claim 3**: The biological fluid comprises blood. (Abstract)

With respect to **claim 5**: The method taught by O'Riordan comprises a step of pumping anticoagulant, wherein pumping comprises: pumping using a peristaltic pump 42 having a variable rotation speed in that the minimum pump speed can be set and the operation of the pump is controlled to ensure maintenance of the desired flow rate of anticoagulant (Page 3, lines 54,55; Page 5, lines 4,5); and adjusting the variable rotation speed to obtain the appropriate solution flow rate. (Page 3, lines 54,55; Page 5, lines 4,5)

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Riordan et al ('148).

With respect to **claim 4**: The method taught by O'Riordan comprises a step of measuring a fluid flow rate  $Q_b$ , wherein measuring a fluid flow rate of the biological fluid comprises calculating the variation in volume of the fluid collected, wherein such volume has an associated weight directly correlated to said volume by the density of the biological fluid. O'Riordan does not teach that measuring a fluid flow rate of the biological fluid comprises calculating the variation in weight of

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the fluid collected. However, the data accumulated by performing the step of measuring the variation in volume can be used to calculate variation in weight by multiplying the variations in volume by the density of the fluid (known because the fluid is blood) and multiplying the resulting mass variation by the gravitational constant to produce the associated weight variations.

Therefore it would be obvious to one of ordinary skill in the art to modify the method taught by O'Riordan such that the step of measuring fluid flow rate  $Q_b$  further comprises the step of calculating the variation in weight of fluid collected with a reasonable expectation of success.

### ***Double Patenting***

The nonstatutory double patenting rejection made in the previous Office action mailed May 7, 2007 is maintained herein.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

October 12, 2007

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

